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SEVENTH REPORT ON STATE RESPONSIBILITY

by

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Addendum

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GE.95-61501 (E)

E. Text of articles 15 to 19 of Part Two of the draft articles on State responsibility

139. The formulations of the proposed draft articles are as follows:

Article 15

Without prejudice [In addition] to the legal consequences entailed by an international delict under articles 6 to 14 of the present Part, an international crime as defined in article 19 of Part One entails the special or supplementary consequences set forth in articles 16 to 19 below.

Article 16

1. Where an internationally wrongful act of a State is an international crime, every State is entitled, subject to the condition set forth in paragraph 5 of article 19 below, to demand that the State which is committing or has committed the crime should cease its wrongful conduct and provide full reparation in conformity with articles 6 to 10 bis, as modified by paragraphs 2 and 3 below.

2. The right of every injured State to obtain restitution in kind as provided in article 7 shall not be subject to the limitations set forth in subparagraphs (c) and (d) of paragraph 1 of the said article, except where restitution in kind would jeopardize the existence of the wrongdoing State as an independent member of the international community, its territorial integrity or the vital needs of its people.

3. Subject to the preservation of its existence as an independent member of the international community and to the safeguarding of its territorial integrity and the vital needs of its people, a State which has committed an international crime is not entitled to benefit from any limitations of its obligation to provide satisfaction and guarantees of non-repetition as envisaged in articles 10 and 10 bis, relating to the respect of its dignity, or from any rules or principles of international law relating to the protection of its sovereignty and liberty.

Article 17*

1. Where the internationally wrongful act of a State is an international crime, every State whose demands under article 16 have not met with an adequate response from the State which has committed or is committing the crime is entitled, subject to the condition set forth in paragraph 5 of article 19 below, to resort to countermeasures under the conditions and restrictions set forth in articles 11, 13 and 14 as modified by paragraphs 2 and 3 of the present article.

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* The formulation of this article depends in some measure upon the formulations of articles 11, 12 and 13 (of Part Two) as finalized by the Drafting Committee.

2. The condition set forth in paragraph 5 of article 19 below does not apply to such urgent, interim measures as are required to protect the rights of an injured State or to limit the damage caused by the international crime.

3. The requirement of proportionality set forth in article 13 shall apply to countermeasures taken by any State so that such measures shall not be out of proportion to the gravity of the international crime.

Article 18

1. Where an internationally wrongful act is an international crime, all States shall, subject to the condition set forth in paragraph 5 of article 19 below:

(a) refrain from recognizing as legal or valid, under international or national law, the situation created by the international crime;

(b) abstain from any act or omission which may assist the wrongdoing State in maintaining the said situation;

(c) assist each other in carrying out their obligations under subparagraphs (a) and (b) and, in so far as possible, coordinate their respective reactions through available international bodies or ad hoc arrangements;

(d) refrain from hindering in any way, by act or omission, the exercise of the rights or powers provided for in articles 16 and 17;

(e) fully implement the aut dedere aut iudicare principle, with respect to any individuals accused of crimes against the peace and security of mankind the commission of which has brought about the international crime of the State or contributed thereto;

(f) take part, jointly or individually, in any lawful measures decided or recommended by any international organization of which they are members against the State which has committed or is committing the international crime;

(g) facilitate, by all possible means, the adoption and implementation of any lawful measures intended to remedy any emergency situations caused by the international crime.

2. Subject to the conditions set forth in paragraph 5 of article 19 below, the State which has committed or is committing an international crime shall not oppose fact-finding operations or observer missions in its territory for the verification of compliance with its obligations of cessation or reparation.

Article 19

1. Any State Member of the United Nations Party to the present Convention claiming that an international crime has been or is being committed by one or more States shall bring the matter to the attention of the General Assembly or the Security Council of the United Nations in accordance with Chapter VI of the United Nations Charter.

2. If the General Assembly or the Security Council resolves by a qualified majority of the Members present and voting that the allegation is sufficiently substantiated as to justify the grave concern of the international community, any Member State of the United Nations Party to the present Convention, including the State against which the claim is made, may bring the matter to the International Court of Justice by unilateral application for the Court to decide by a judgment whether the alleged international crime has been or is being committed by the accused State.

3. The qualified majority referred to in the preceding paragraph shall be, in the General Assembly, a two-thirds majority of the members present and voting, and in the Security Council, nine members present and voting including permanent members, provided that any members directly concerned shall abstain from voting.

4. In any case where the International Court of Justice is exercising its competence in a dispute between two or more Member States of the United Nations Parties to the present Convention, on the basis of a title of jurisdiction other than paragraph 2 of the present article, with regard to the existence of an international crime of State, any other Member State of the United Nations which is a party to the present Convention shall be entitled to join, by unilateral application, the proceedings of the Court for the purpose of paragraph 5 of the present article.

5. A decision of the International Court of Justice that an international crime has been or is being committed shall fulfil the condition for the implementation, by any Member State of the United Nations Party to the present Convention, of the special or supplementary legal consequences of international crimes of States as contemplated in articles 16, 17 and 18 of the present Part.

Article 20

The provisions of the articles of the present Part are without prejudice to:

(i) any measures decided upon by the Security Council of the United Nations in the exercise of its functions under the provisions of the Charter;

(ii) the inherent right of self-defence as provided in Article 51 of the Charter.